

January 10, 2019

Via E-mail and ECF

Honorable J. Paul Oetken, U.S.D.J.
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007
OetkenNYSDChambers@nysd.uscourts.gov

Re: King-Devick Test, Inc. v. Langone Hospital, et al., Case No. 17-cv-9307

Dear Judge Oetken,

We represent plaintiff King-Devick Test Inc., in the above-captioned action. We write pursuant to Paragraph 1(A) of Your Honor's Individual Practices in Civil Cases and in response to Defendants' letter motion dated January 8, 2019, for leave to amend the Answer and Counterclaims. **Defendants consent to the relief requested herein.** Specifically, Plaintiff requests that the Court:

1. **Defer a decision on Defendants' letter motion** until after the upcoming court conference on January 18, 2019, in order to allow Plaintiff the opportunity to seek leave to file an amended Complaint that will significantly narrow the issues and claims in this case; and
2. **Grant Plaintiff an extension of time to file a response to Defendants' Answer and Counterclaims** (Dkt. No. 52), which is currently due January 16, 2019, at least until after the upcoming conference, so that Plaintiff is not required to respond to a pleading that the parties agree may be amended shortly thereafter, subject to the Court's approval.

As grounds for this motion, Plaintiff plans to seek leave to amend its complaint to remove certain counts and significantly narrow the issues remaining in this case. Plaintiff

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is also of the position that facts obtained in discovery require certain amendments to the pleadings.

After Defendants filed their letter motion seeking leave to amend the Answer and Counterclaims, Plaintiff conferred with Defendant about Plaintiff's similar intention to seek leave to amend the Complaint. Plaintiff agreed to provide Defendants with a proposed amended Complaint before the upcoming January 18, 2019 conference. After determining whether Defendants consent to the amendments, Plaintiff will then seek leave to amend from the Court. Should such leave be granted, Defendants will be able to respond to the amended Complaint with an amended Answer and Counterclaims in due course or as ordered by the Court, including the specific amendments they have proposed, which Plaintiff has advised it would no longer oppose. Plaintiff will then file a responsive pleading to the amended Answer and Counterclaims in due course or as ordered by the Court.

For the foregoing reasons, and with Defendants' consent, Plaintiff requests that the Court defer a decision on Defendants' letter motion, and also to suspend the deadline to respond to the current Answer and Counterclaims (Dkt. 52), until the January 18, 2019 conference.

Very truly yours,

A handwritten signature in blue ink, appearing to read "David A. Kluft", is written over a light blue rectangular background.

David A. Kluft

cc: Counsel for Defendants (via e-mail)